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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 JULIA VERONICA GONZALEZ,) Case No. CV 15-4541-JPR
12)
13 Plaintiff,)
14)
15 v.) MEMORANDUM DECISION AND ORDER
16) AFFIRMING COMMISSIONER
17)
18 CAROLYN W. COLVIN, Acting)
19 Commissioner of Social)
20 Security,)
21)
22 Defendant.)
23)
24)
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18 **I. PROCEEDINGS**

19 Plaintiff seeks review of the Commissioner's final decision
20 denying her application for Social Security disability insurance
21 benefits ("DIB"). The parties consented to the jurisdiction of
22 the undersigned U.S. Magistrate Judge under 28 U.S.C. § 636(c).
23 The matter is before the Court on the parties' Joint Stipulation,
24 filed April 7, 2016, which the Court has taken under submission
25 without oral argument. For the reasons stated below, the
26 Commissioner's decision is affirmed.
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1 **II. BACKGROUND**

2 Plaintiff was born in 1968. (Administrative Record ("AR")
3 67.) She graduated from high school and received her associate
4 of arts degree but did not complete her bachelor's degree. (AR
5 67-68.) She worked as a supervisor from 1996 to 2010 and a
6 preschool teacher before that. (AR 72, 74, 141, 228.)

7 On October 13, 2011, Plaintiff protectively filed an
8 application for DIB (AR 120; see also AR 88), alleging that she
9 had been unable to work since March 16, 2011, because of
10 diabetes, fibromyalgia, chronic pain in her right thigh, sporadic
11 paralysis of her right legs, severe cramping of her hands and
12 fingers, migraine headaches, high blood pressure, heart problems,
13 retinopathy, loss of vision, neuropathy, aneurysm, breast lumps,
14 and depression. (AR 140.) After her application was denied
15 initially, on April 19, 2012 (AR 91-94), and on reconsideration
16 (AR 576-77), she requested a hearing before an Administrative Law
17 Judge (AR 96). A hearing was held on February 27, 2013, at which
18 Plaintiff, who was not represented by counsel,¹ testified. (AR
19 53-87.) Following the hearing, the ALJ propounded
20 interrogatories to a vocational expert (AR 212) and provided
21 Plaintiff the opportunity to comment on the VE's responses,
22 submit more evidence, or ask for cross-interrogatories (AR 236).
23 Plaintiff did not respond. (AR 34.)

24 In a written decision issued June 7, 2013, the ALJ found
25 Plaintiff not disabled. (AR 33-47.) Plaintiff requested review
26

27 ¹ Plaintiff was represented by counsel before the Appeals
28 Council, however. (See AR 9.)

1 from the Appeals Council, and on April 30, 2015, it denied
2 review. (AR 1-3.) This action followed.

3 **III. STANDARD OF REVIEW**

4 Under 42 U.S.C. § 405(g), a district court may review the
5 Commissioner's decision to deny benefits. The ALJ's findings and
6 decision should be upheld if they are free of legal error and
7 supported by substantial evidence based on the record as a whole.
8 See id.; Richardson v. Perales, 402 U.S. 389, 401 (1971); Parra
9 v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). Substantial
10 evidence means such evidence as a reasonable person might accept
11 as adequate to support a conclusion. Richardson, 402 U.S. at
12 401; Lingenfelter v. Astrue, 504 F.3d 1028, 1035 (9th Cir. 2007).
13 It is more than a scintilla but less than a preponderance.
14 Lingenfelter, 504 F.3d at 1035 (citing Robbins v. Soc. Sec.
15 Admin., 466 F.3d 880, 882 (9th Cir. 2006)). To determine whether
16 substantial evidence supports a finding, the reviewing court
17 "must review the administrative record as a whole, weighing both
18 the evidence that supports and the evidence that detracts from
19 the Commissioner's conclusion." Reddick v. Chater, 157 F.3d 715,
20 720 (9th Cir. 1998). "If the evidence can reasonably support
21 either affirming or reversing," the reviewing court "may not
22 substitute its judgment" for the Commissioner's. Id. at 720-21.

23 **IV. THE EVALUATION OF DISABILITY**

24 Claimants are "disabled" for purposes of receiving Social
25 Security benefits if they are unable to engage in any substantial
26 gainful activity owing to a physical or mental impairment that is
27 expected to result in death or has lasted, or is expected to
28 last, for a continuous period of at least 12 months. 42 U.S.C.

1 § 423(d)(1)(A); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir.
2 1992).

3 A. The Five-Step Evaluation Process

4 The ALJ follows a five-step evaluation process to assess
5 whether a claimant is disabled. 20 C.F.R. § 404.1520(a)(4);
6 Lester v. Chater, 81 F.3d 821, 828 n.5 (9th Cir. 1995) (as
7 amended Apr. 9, 1996). In the first step, the Commissioner must
8 determine whether the claimant is currently engaged in
9 substantial gainful activity; if so, the claimant is not disabled
10 and the claim must be denied. § 404.1520(a)(4)(i).

11 If the claimant is not engaged in substantial gainful
12 activity, the second step requires the Commissioner to determine
13 whether the claimant has a "severe" impairment or combination of
14 impairments significantly limiting her ability to do basic work
15 activities; if not, the claimant is not disabled and her claim
16 must be denied. § 404.1520(a)(4)(ii).

17 If the claimant has a "severe" impairment or combination of
18 impairments, the third step requires the Commissioner to
19 determine whether the impairment or combination of impairments
20 meets or equals an impairment in the Listing of Impairments
21 ("Listing") set forth at 20 C.F.R. part 404, subpart P, appendix
22 1; if so, disability is conclusively presumed.
23 § 404.1520(a)(4)(iii).

24 If the claimant's impairment or combination of impairments
25 does not meet or equal an impairment in the Listing, the fourth
26 step requires the Commissioner to determine whether the claimant
27
28

1 has sufficient residual functional capacity ("RFC")² to perform
2 her past work; if so, she is not disabled and the claim must be
3 denied. § 404.1520(a)(4)(iv). The claimant has the burden of
4 proving she is unable to perform past relevant work. Drouin, 966
5 F.2d at 1257. If the claimant meets that burden, a prima facie
6 case of disability is established. Id.

7 The Commissioner then bears the burden of establishing that
8 the claimant is not disabled because she can perform other
9 substantial gainful work available in the national economy.
10 § 404.1520(a)(4)(v); Drouin, 966 F.2d at 1257. That
11 determination comprises the fifth and final step in the
12 sequential analysis. § 404.1520(a)(4)(v); Lester, 81 F.3d at 828
13 n.5; Drouin, 966 F.2d at 1257.

14 B. The ALJ's Application of the Five-Step Process

15 At step one, the ALJ found that Plaintiff had not engaged in
16 substantial gainful activity since March 16, 2011, the alleged
17 onset date. (AR 36.) At step two, he concluded that she had
18 "determinable conditions of ill-being" of "status post
19 hysterectomy"; degenerative disc disease of the lumbosacral
20 spine; diabetes mellitus with signs of glaucoma and diabetic
21 retinopathy and neuropathy; hypertension; obesity; and adjustment
22 disorder with depressed mood. (Id.) He found that some of these
23 conditions were not severe individually but were in combination.
24 (Id.) The ALJ rejected all other conditions as not medically
25 determinable "[i]n view of the medical evidence (or lack
26

27 ² RFC is what a claimant can do despite existing exertional
28 and nonexertional limitations. 20 C.F.R. § 404.1545; see Cooper
v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

1 thereof)." (AR 36-37.) At step three, he determined that
2 Plaintiff's impairments did not meet or equal a listing. (AR
3 39.)

4 At step four, the ALJ found that Plaintiff had the RFC to
5 perform a full range of light work. (AR 40.) In particular, she
6 could lift 25 pounds occasionally and 10 pounds frequently.
7 (Id.) She could stand and walk up to six hours and sit up to six
8 hours in an eight-hour workday. (Id.) Based on the VE's
9 interrogatory responses, the ALJ concluded that Plaintiff could
10 perform her past relevant work as a supervisor and a preschool
11 teacher. (AR 46.) Accordingly, he found her not disabled. (AR
12 47.) He also noted that she could likely perform other work in
13 the national economy, although he did not make any actual
14 findings at step five. (Id.)

15 **V. DISCUSSION**

16 Plaintiff argues that the ALJ failed to properly consider
17 the opinion of her treating physician, neurologist Dr. Dhia Al-
18 Wardi, or articulate legally sufficient reasons for discrediting
19 her subjective symptom testimony and the lay-witness statement of
20 her friend Bertha Barajas. (J. Stip. at 3, 5, 16-17, 22.)

21 A. The ALJ Properly Assessed Dr. Al-Wardi's October 13, 22 2011 Statement

23 Plaintiff argues that the ALJ "did not provide specific and
24 legitimate reasons supported by substantial evidence for
25 rejecting" statements Dr. Al-Wardi made in a "To Whom It May
26 Concern" letter dated October 13, 2011. (Id. at 5.) For the
27 reasons discussed below, remand is not warranted on this ground.
28

1 1. Applicable law

2 Three types of physicians may offer opinions in Social
3 Security cases: (1) those who directly treated the claimant,
4 (2) those who examined but did not treat the claimant, and
5 (3) those who did neither. Lester, 81 F.3d at 830. A treating
6 physician's opinion is generally entitled to more weight than an
7 examining physician's, and an examining physician's opinion is
8 generally entitled to more weight than a nonexamining
9 physician's. Id.

10 This is so because treating physicians are employed to cure
11 and have a greater opportunity to know and observe the claimant.
12 Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996). If a
13 treating physician's opinion is well supported by medically
14 acceptable clinical and laboratory diagnostic techniques and is
15 not inconsistent with the other substantial evidence in the
16 record, it should be given controlling weight. § 404.1527(c)(2).
17 If a treating physician's opinion is not given controlling
18 weight, its weight is determined by length of the treatment
19 relationship, frequency of examination, nature and extent of the
20 treatment relationship, amount of evidence supporting the
21 opinion, consistency with the record as a whole, the doctor's
22 area of specialization, and other factors. § 404.1527(c)(2)-(6).

23 When a treating physician's opinion is not contradicted by
24 other evidence in the record, it may be rejected only for "clear
25 and convincing" reasons. See Carmickle v. Comm'r, Soc. Sec.
26 Admin., 533 F.3d 1155, 1164 (9th Cir. 2008) (citing Lester, 81
27 F.3d at 830-31). When it is contradicted, the ALJ must provide
28 only "specific and legitimate reasons" for discounting it. Id.

1 (citing Lester, 81 F.3d at 830-31). Furthermore, "[t]he ALJ need
2 not accept the opinion of any physician, including a treating
3 physician, if that opinion is brief, conclusory, and inadequately
4 supported by clinical findings." Thomas v. Barnhart, 278 F.3d
5 947, 957 (9th Cir. 2002); accord Batson v. Comm'r of Soc. Sec.
6 Admin., 359 F.3d 1190, 1195 (9th Cir. 2004).

7 2. Relevant background

8 On March 16, 2011, Plaintiff had a hysterectomy. (AR 75,
9 256.) Following her surgery, she was admitted to the San Gabriel
10 Valley Medical Center to have her sutures removed, complaining of
11 severe pain and anxiety. (AR 258-59, 263.) Her charts from this
12 visit note possible pneumonia and hyperglycemia. (AR 257.) She
13 returned to the medical center on April 10, 2011, with a
14 postoperative wound infection and was again admitted; it was
15 noted that she suffered from "out-of-control" diabetes. (AR 313,
16 315-16, 321-22.) She visited the center again on April 28, 2011,
17 complaining of postsurgical wound pain, and was diagnosed with
18 "intractable abdominal pain," leg pain, and dyspnea and was
19 discharged that day.³ (AR 341-42.)

20 On May 12, 2011, Plaintiff's insurance approved an office
21 visit with Dr. Al-Wardi for "pain in limb," describing Plaintiff
22 as an "established patient with [a] new diagnosis." (AR 458.)
23 On May 20, 2011, an MRI of her lumbar spine was also approved (AR
24 459), along with a follow-up visit with Dr. Al-Wardi to review
25 the MRI results (AR 462). Soon thereafter, on May 24, 2011,
26

27 ³ Dyspnea is shortness of breath. Stedman's Medical
28 Dictionary 556 (27th ed. 2000).

1 Plaintiff had an MRI of her lumbar spine. (AR 460.) The results
 2 were essentially normal: "L5-S1 disc desiccation" but "otherwise
 3 unremarkable."⁴ (AR 461.)

4 On July 8, 2011, Plaintiff returned to the medical center,
 5 complaining that she was "weak." (AR 359.) A doctor noted that
 6 Plaintiff had "labile hyperglycemia" and "exacerbation of thigh
 7 pain." (AR 360, 364.) She was instructed to continue with her
 8 prescribed medication⁵ and follow up with her primary-care

9 _____
 10 ⁴ Desiccation is dehydration. Stedman's, supra, at 483.
 11 "Degeneration of the discs particularly in the moving sections of
 12 the spine (cervical and lumbar levels) is a natural process of
 13 aging. This dehydration or desiccation of the disc material
 14 reduces the flexibility and typically the height of the disc."
 15 Degenerative Disc Disease, UCLA Health, [http://](http://neurosurgery.ucla.edu/degenerative-disc-disease)
 16 neurosurgery.ucla.edu/degenerative-disc-disease (last accessed
 Sept. 13, 2016). "Nearly everyone experiences some disc
 degeneration after age 40." Degenerative Back Conditions,
 Cleveland Clinic, [http://my.clevelandclinic.org/services/](http://my.clevelandclinic.org/services/orthopaedics-rheumatology/diseases-conditions/degenerative-back-conditions)
 orthopaedics-rheumatology/diseases-conditions/degenerative-back-
 conditions (last accessed Sept. 13, 2016).

17 ⁵ Plaintiff was taking Cymbalta, methadone, Celebrex,
 18 Topamax, Cozaar, Novolog, and Levemir. (AR 388.) Cymbalta is
 19 the brand name of a selective serotonin and norepinephrine
 20 reuptake inhibitor used to treat depression and generalized
 21 anxiety disorder. See Duloxetine, MedlinePlus, [https://](https://medlineplus.gov/druginfo/meds/a604030.html)
 22 medlineplus.gov/druginfo/meds/a604030.html (last updated May 15,
 23 2016). Methadone is used for severe pain in people who are
 24 expected to need pain medication around the clock for an extended
 25 period of time and who cannot be treated with other medications.
 26 See Methadone, MedlinePlus, [https://medlineplus.gov/druginfo/](https://medlineplus.gov/druginfo/meds/a682134.html)
 27 [meds/a682134.html](https://medlineplus.gov/druginfo/meds/a682134.html) (last updated Aug. 15, 2016). Celebrex is the
 28 brand name for celecoxib, a nonsteroidal antiinflammatory used to
 relieve pain, tenderness, swelling, and stiffness caused by
 arthritis and spondylitis. See Celecoxib, [http://](http://www.nlm.nih.gov/medlineplus/druginfo/meds/a699022.html)
www.nlm.nih.gov/medlineplus/druginfo/meds/a699022.html (last
 updated July 15, 2016). Topamax is the brand name of a seizure
 medication also used to prevent migraine headaches. See
Topiramate, MedlinePlus, [https://medlineplus.gov/druginfo/meds/](https://medlineplus.gov/druginfo/meds/a697012.html)
[a697012.html](https://medlineplus.gov/druginfo/meds/a697012.html) (last updated Jan. 15, 2015). Cozaar is the brand
 (continued...)

1 doctor.⁶ (AR 364.) She returned again on August 11, 2011,
2 complaining of neck, back, and right-thigh pain, and it was noted
3 that her diabetes was still out of control. (AR 270-71.) On
4 August 17, 2011, she was admitted to the emergency room,
5 complaining of hypoglycemia (AR 281), which was noted to have
6 been resolved (AR 286). Plaintiff was placed on a psychiatric
7 hold because her symptoms were "psychogenic"; after being told
8 that, she said she planned to run into the streets to kill
9 herself. (AR 286, 467.)⁷ She was discharged the following day
10 with a diagnosis of "Axis I: Major Depression." (AR 467.) On
11 August 23, 2011, her insurance approved another office visit with
12 Dr. Al-Wardi. (AR 463.)

13 On September 6, 2011, Plaintiff met with cardiovascular
14 specialist Dr. Michael Yeh for a cardiac consultation. (AR 496-
15 98.) She complained of swelling and pain and reported that she

16 _____
17 ⁵ (...continued)
18 name of a medication used to treat high blood pressure and kidney
19 disease. See Losartan, MedlinePlus, <https://medlineplus.gov/druginfo/meds/a695008.html> (last updated Apr. 15, 2015). Novolog
20 is the brand name of an insulin aspart used to treat diabetes;
21 insulin aspart is a short-acting, manmade version of human
22 insulin. See Insulin Aspart (rDNA Origin) Injection,
23 MedlinePlus, <https://medlineplus.gov/druginfo/meds/a605013.html> (last updated May 15, 2016). Levemir is the brand
24 name of an insulin detemir used to treat diabetes; insulin
25 detemir is a long-acting, manmade version of human insulin. See
26 Insulin Detemir (rDNA Origin) Injection, MedlinePlus,
27 <https://medlineplus.gov/druginfo/meds/a606012.html> (last updated
28 July 15, 2016).

25 ⁶ On July 21, 2011, her primary-care doctor authorized a
26 front wheeled walker for Plaintiff because of her "difficulty in
27 walking." (AR 456.)

28 ⁷ Plaintiff later reported "having been frustrated and not
actually suicidal." (AR 657.)

1 was using a walker. (Id.) Dr. Yeh examined Plaintiff and found
2 that she had an abnormal electrocardiogram, "minimal" edema, and
3 "acceptable" blood pressure. (AR 497.) He recommended that she
4 undergo a stress test and a "2-D echo"⁸ and that she continue
5 taking her medication. (Id.)

6 Plaintiff saw Dr. R. Ray Quemena, a podiatrist, on September
7 8, 2011. (AR 513.) She complained of "difficulty walking
8 especially on the right foot, with cramps and unstable gait."
9 (Id.) Dr. Quemena noted that Plaintiff had pain, diabetes with
10 neuropathy, abnormal gait, and hammertoes. (Id.)

11 On September 27, 2011, Plaintiff underwent a stress
12 echocardiogram as recommended by Dr. Yeh and had a "[n]ormal
13 cardiac response to stress." (AR 464.) She followed up with Dr.
14 Yeh on October 11, 2011, complaining that her legs were still
15 swollen and that her hands also felt swollen and tight. (AR 441-
16 43.) Dr. Yeh noted that her edema was "not resolved and [was]
17 progressively worsening" and that, although the stress test was
18 normal, "the valvular pathology [had] not been ruled out
19 completely." (AR 442.) Because a physical exam was "not
20 revealing from the valvular point of view," Dr. Yeh again
21 recommended a 2D echo test. (Id.) Dr. Yeh noted that
22 Plaintiff's hypertension was controlled, and he recommended that
23 she exercise and follow a low-fat diet. (AR 442-43.) A 2D echo
24 was performed on October 26, 2011, and the findings were normal.

25
26 ⁸ An echocardiogram ("echo") is the record obtained from the
27 use of ultrasound to investigate the heart. Stedman's, supra, at
28 563. A two-dimensional echo is an echo "in which an image is
reconstructed from the echoes stimulated and detected by a linear
array or moving transducers." Id.

1 (AR 488-89.)

2 Meanwhile, on October 13, 2011, Dr. Al-Wardi wrote a note
3 "To Whom It May Concern," stating in its entirety that
4 [Plaintiff] is under my care for severe fibromyalgia,
5 severe depression, diabetes out of control and frequent
6 migraine[.] In my opinion, she is perminently [sic]
7 disabeld [sic].

8 (AR 437.) In response to a January 2012 request from the Social
9 Security Agency for medical records relating to Plaintiff's care,
10 Dr. Al-Wardi's office responded that "[n]o records [were] found."
11 (AR 536.)

12 On October 12, 2011, Dr. Quemena referred Plaintiff to
13 physical therapy. (AR 474.) She attended physical therapy on
14 October 21, 25, and 26 and November 1, 2, 8, and 10, 2011. (AR
15 475-78.) On November 2, 2011, she was "feeling better" and had
16 "walked several blocks" to the appointment. (AR 476.) On
17 November 8, 2011, she reported a gradual reduction in pain and an
18 increase in her ability to walk and stand; she again "walked four
19 to five blocks" to attend therapy. (Id.) In an office visit
20 with Dr. Yeh on November 8, 2011, it was noted that her edema had
21 improved. (AR 486.) She did not schedule a follow-up after her
22 November 10, 2011 physical-therapy appointment, and she was
23 discharged from physical therapy on December 21. (AR 475.)

24 In February 2012, two Social Security medical consultants,
25 Dr. Ulin Sargeant and Dr. Thaworn Rathana-Nakintara, examined
26 Plaintiff. (AR 521-26, 529-33.) Dr. Sargeant, who was board
27 eligible in internal medicine (AR 526), found that Plaintiff had
28 pain in her right thigh but was "not impressed that [it was] a

1 fibromyalgia presentation" (AR 525). Dr. Sargeant also noted
2 that she had diabetes mellitus and her hypertension appeared well
3 controlled. (Id.) In a functional assessment, Dr. Sargeant
4 found that Plaintiff was "able to lift and carry 50 pounds
5 occasionally and 25 pounds frequently due to her right lower
6 extremity pain[,] . . . to push and pull frequently[,] . . .
7 [and] to walk and stand six hours out of an eight-hour workday
8 with breaks." (Id.) Further, Dr. Sargeant opined that Plaintiff
9 was "able to sit six hours out of an eight-hour workday with
10 breaks." (AR 526.) Noting that Plaintiff reported using a
11 walker to walk up to 10 blocks or more and was able to stand for
12 a long period of time with it (AR 521), and after observing that
13 she "did not appear to have dependence on the walker when she was
14 ambulating" and that she "refuse[d] to demonstrate any ambulation
15 without the walker" (AR 523), Dr. Sargeant was not able to "find
16 anything in her physical examination to confirm that a walker
17 [was] necessary" (AR 526). Indeed, Plaintiff's "physical
18 examination . . . seem[ed] to be inconsistent with a generalized
19 neurological deficit or even of one that warrants the use of a
20 walker." (AR 525.) He found that Plaintiff was "able to climb,
21 balance, kneel, and crawl frequently" and was "able to walk on
22 uneven terrain, climb ladders, and work at heights frequently."
23 (AR 526.) Dr. Sargeant found no limitations in her hearing,
24 sight, or use of her hands for fine and gross manipulation.
25 (Id.)

26 Dr. Rathana-Nakintara, a board-eligible psychiatrist (AR
27 533), completed a psychiatric evaluation on February 14, 2012 (AR
28 529). After interviewing Plaintiff and conducting a mental-

1 status examination,⁹ Dr. Rathana-Nakintara diagnosed her with
2 adjustment disorder with depressed mood. (AR 532.) Dr. Rathana-
3 Nakintara found that Plaintiff "would have no limitations
4 performing simple and repetitive tasks and no limitations
5 performing detailed and complex tasks." (Id.) She "would be
6 able to perform work activities on a consistent basis without
7 special or additional supervision," and she would "have no
8 limitations completing a normal workday or work week due to her
9 mental condition . . . [or] accepting instructions from
10 supervisors and interacting with coworkers and the public."
11 (Id.) Dr. Rathana-Nakintara found that Plaintiff "would be able
12 to handle the usual stresses, changes and demands of gainful
13 employment." (Id.) Her prognosis was good. (Id.) In April
14 2012, following these state medical examinations, Dr. James
15 Metcalf¹⁰ reviewed Plaintiff's records and concluded that her

17 ⁹ During the examination, Dr. Rathana-Nakintara tested
18 Plaintiff's speech ("fluent with normal prosody, rate, and
19 rhythm"); mood ("not depressed or anxious"); affect
20 ("appropriate, reactive, and congruent with mood"); thought
21 process ("linear and goal-directed"); thought content ("no
22 evidence of auditory or visual hallucinations, delusions, or
23 illusions"); cognition, orientation, and memory ("alert and
24 oriented to person, place, time, and situation"); concentration
25 (noting that Plaintiff insisted upon having paper and pencil for
26 subtraction but "did well on serial threes subtraction" and "was
27 able to spell the word 'world' forward and backward"); abstract
28 thinking ("[w]hen . . . asked to state the similarities between
an apple and an orange, [Plaintiff] stated that they were both
fruit" and "was able to analyze the meaning of simple proverbs");
fund of knowledge ("able to name two past Presidents, and the
current President," and "was able to identify the capital of the
United States and of California"); and insight and judgment ("has
common sense understandings"). (AR 531.)

¹⁰ Dr. Metcalf's signature line includes a

(continued...)

1 allegations were "not credible" and that "[b]ased on medical
2 evidence in file, [she] should be able to perform medium work."
3 (AR 565.)

4 On April 11, 2012, reviewing psychiatrist Z. Yousuf¹¹
5 determined that Plaintiff's adjustment disorder was not severe.
6 (AR 544; see also AR 547.) Dr. Yousuf also noted that Plaintiff
7 had mild restrictions in activities of daily living; had no
8 difficulties in maintaining social functioning, concentration,
9 persistence, or pace; and had not experienced any episodes of
10 decompensation of extended duration. (AR 554.) Dr. Yousuf
11 opined that Plaintiff had "no workplace limitations" and "should
12 be able to perform a full range of tasks." (AR 556.) He noted
13 that she had "one psych hospitalization at [the] same time as [a]
14 diabetic reaction" and that her medication was "effective."
15 (Id.)

16 On May 28, 2012, Plaintiff underwent a CT scan of her head
17 and lumbar spine. (AR 572, 574.) A "5mm central disc protrusion
18 at L5-S1" was noted (presumably the same L5-S1 disc desiccation
19 noted in the May 24, 2011 MRI), but the results were otherwise
20 unremarkable. (Id.) She was hospitalized from August 2 to 6,
21

22 ¹⁰ (...continued)
23 medical-consultant code of 19, indicating "[i]nternal [m]edicine"
24 (AR 565); see Program Operations Manual System (POMS) DI
25 24501.004, U.S. Soc. Sec. Admin. (May 5, 2015),
<http://policy.ssa.gov/poms.nsf/lnx/0424501004>.

26 ¹¹ Dr. Yousuf's signature line includes a medical-consultant
27 code of 37, indicating "[p]sychiatry" (AR 544); see Program
28 Operations Manual System (POMS) DI 24501.004, U.S. Soc. Sec.
Admin. (May 5, 2015), <http://policy.ssa.gov/poms.nsf/lnx/0424501004>.

1 2012, for leg pain and weakness, diabetes, and high blood
2 pressure. (AR 584.) During that hospitalization, a doctor noted
3 that Plaintiff "likely" had conversion disorder¹² and that "her
4 legs [were] actually strong." (AR 645.) She was told that
5 because no "organic cause for her weakness" existed, she could
6 "motivate herself to gain her strength back." (Id.) During a
7 health-center visit on August 22, 2012, she was "upset that all
8 testing done [previously] showed that nothing was wrong." (AR
9 710.)

10 3. Analysis

11 The ALJ considered but gave "reduced weight" to Dr. Al-
12 Wardi's October 13, 2011 note, "essentially adopt[ing]" the
13 assessments of the mental-health state-agency consultants and
14 "essentially agree[ing]" with state-agency consultants concerning
15 Plaintiff's physical limitations. (AR 43.) Because Dr. Al-
16 Wardi's note was contradicted by other medical opinions in the
17 record, the ALJ had to give only specific and legitimate reasons
18 for rejecting it. See Carmickle, 533 F.3d at 1164. As discussed
19 below, the ALJ did so.

20 First, the ALJ found that Dr. Al-Wardi's two-sentence note
21 did not amount to a "medical opinion." (AR 42.) He stated that
22 he was "hard-pressed to find a formal functional assessment from
23 a treating source that even rises to the status of a medical

24
25 ¹² Conversion disorder is a mental condition in which a
26 person has nervous-system (neurologic) symptoms that cannot be
27 explained by medical evaluation. See Conversion disorder,
28 MedlinePlus, <https://medlineplus.gov/ency/article/000954.htm>
(last updated Oct. 31, 2014). The ALJ was "disinclined to adopt"
the conversion-disorder diagnosis (AR 38), a finding that
Plaintiff has not challenged on appeal.

1 opinion for present purposes." (AR 42.) Indeed, the statement
2 from Dr. Al-Wardi is a handwritten note, directed "To Whom It May
3 Concern," comprising two sentences. (AR 437.) Such conclusory
4 statements, with no supporting explanation or citation to medical
5 records, may permissibly be rejected by an ALJ. See Molina v.
6 Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012) (ALJ may permissibly
7 reject check-off reports that do not contain explanation of basis
8 for conclusions); Batson, 359 F.3d at 1195 ("[A]n ALJ may
9 discredit treating physicians' opinions that are conclusory,
10 brief, and unsupported by the record as a whole . . . or by
11 objective medical findings[.]"). The ALJ could also properly
12 discredit Dr. Al-Wardi's two-line note because it was perfunctory
13 and too vague to be useful. See Thomas v. Comm'r of Soc. Sec.
14 Admin., 480 F. App'x 462, 463 (9th Cir. 2012) (ALJ permissibly
15 rejected treating-physician opinion that was "perfunctory and
16 unsupported by specific functional limitations"); King v. Comm'r
17 of Soc. Sec. Admin., 475 F. App'x 209, 210 (9th Cir. 2012) (ALJ
18 properly rejected treating physician's finding of mild to
19 moderate limitations in part because they were "too vague to be
20 useful").

21 Further, the ALJ found that Dr. Al-Wardi's disability note
22 was not supported by any treatment notes or other evidence of the
23 treatment relationship. (AR 42.) Indeed, the extent of Dr. Al-
24 Wardi's relationship with Plaintiff is not clear from the record.
25 There is no evidence of how often she actually met with Dr. Al-
26 Wardi, and Dr. Al-Wardi did not provide any medical records or
27 treatment notes when requested to do so. (AR 536.) Other than
28 Dr. Al-Wardi's statement that Plaintiff "[was] under [his] care"

1 and the four approvals by her insurance company for office visits
2 or tests requested by Dr. Al-Wardi (see AR 437, 458-59, 462-63),
3 nothing in the record indicates that Dr. Al-Wardi ever examined
4 Plaintiff. Nor does anything in the record indicate that Dr. Al-
5 Wardi necessarily reviewed Plaintiff's medical records. The ALJ
6 could properly have relied on the apparent minimal treatment
7 history and examination findings to discount Dr. Al-Wardi's
8 opinion. See Connett v. Barnhart, 340 F.3d 871, 875 (9th Cir.
9 2003) (treating physician's opinion properly rejected when
10 treatment notes "provide[d] no basis for the functional
11 restrictions he opined should be imposed on [plaintiff]");
12 § 404.1527(c)(2)(i) ("[l]ength of the treatment relationship" and
13 "frequency of examination" are relevant factors in assessing
14 treating-source opinion); Edlund v. Massanari, 253 F.3d 1152,
15 1157 & n.6 (9th Cir. 2001) (as amended) (same); see also
16 § 404.1527(c)(6) (extent to which doctor is familiar with record
17 is relevant factor in deciding weight to give opinion).

18 Next, the ALJ found that Dr. Al-Wardi's statement that
19 Plaintiff was permanently disabled was not supported by the other
20 medical evidence in the record. (AR 43.) Indeed, the medical
21 records don't reflect any finding that Plaintiff is permanently
22 disabled. As the ALJ correctly summarized, her medical records
23 are rife with unremarkable findings and normal test results. (AR
24 37; see, e.g., AR 434 ("[m]ammogram is unremarkable"), 460-61
25 ("unremarkable MRI of the lumbar spine"), 464 ("[n]ormal cardiac
26 response to stress"), 623 ("[n]ormal expiratory chest x-ray"),
27 625 ("[u]nremarkable noncontrast CT scan of the head"), 645 ("no
28 organic cause for her weakness").) Examining Dr. Sargeant

1 performed a complete physical evaluation of Plaintiff, finding
2 that she had no notable physical limitations. (AR 521-26.)
3 Because Dr. Sargeant personally observed and examined Plaintiff,
4 and because the findings of that examination were consistent with
5 the objective evidence, Dr. Sargeant's opinion constitutes
6 substantial evidence supporting the ALJ's decision. See
7 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001)
8 (finding that examining physician's "opinion alone constitutes
9 substantial evidence, because it rests on his own independent
10 examination of [plaintiff]"); Andrews v. Shalala, 53 F.3d 1035,
11 1041 (9th Cir. 1995) (opinion of nontreating source based on
12 independent clinical findings may itself be substantial
13 evidence).

14 The same analysis holds for Dr. Rathana-Nakintara, who
15 performed a complete psychiatric evaluation of Plaintiff and
16 found no functional limitations. (AR 529-33.) Dr. Al-Wardi was
17 a neurologist, not a psychiatrist, and thus his statement that
18 Plaintiff had "severe depression" was entitled to less weight.
19 See § 404.1527(c)(6) (in weighing medical opinions, ALJ will
20 generally give more weight to opinion of specialist when medical
21 issue is related to his or her area of speciality). The
22 consulting psychiatrist, Dr. Rathana-Nakintara, found that
23 Plaintiff did not have significant limitations. Dr. Rathana-
24 Nakintara's opinion also constitutes substantial evidence
25 supporting the ALJ's decision. See Tonapetyan, 242 F.3d at 1149.

26 Moreover, as the ALJ pointed out (AR 43), the examining
27 doctors apparently had access to record evidence that Dr. Al-
28 Wardi never saw and thus had a broader view of her limitations.

1 Accordingly, Dr. Al-Wardi's "outlier" opinion (id.), to the
2 extent it was even a formal medical opinion, was properly
3 discounted based on its inconsistency with the rest of the
4 opinion and medical evidence. See Batson, 359 F.3d at 1195 (ALJ
5 may discredit treating physicians' opinions that are "unsupported
6 by the record as a whole").

7 Plaintiff argues that the ALJ was "required to recontact"
8 Dr. Al-Wardi to ascertain the basis of his opinion that Plaintiff
9 was permanently disabled. (J. Stip. at 8.) The authority
10 Plaintiff cites for that proposition, SSR 96-5p, 1996 WL 374183,
11 at *2 (July 2, 1996), states that the ALJ must make "every
12 reasonable effort" to recontact treating sources "when they
13 provide opinions on issues reserved to the Commissioner and the
14 bases for such opinions are not clear." It goes on to state that
15 treating-source opinions finding that a person is disabled or
16 unable to work "can never be entitled to controlling weight or
17 given special significance." Id. at *5. As an initial matter,
18 and as previously noted, Dr. Al-Wardi's treatment relationship
19 with Plaintiff, if any, is unclear. Thus, SSR 96-5p may not even
20 apply. Further, as the ALJ noted (AR 43), the agency had already
21 contacted Dr. Al-Wardi and been told that he had no treatment
22 records for Plaintiff. Thus, even if the ALJ's failure to
23 contact Dr. Al-Wardi again was error, it was harmless. See
24 Mercado v. Colvin, No. 2:15-cv-01592 JRC, 2016 WL 3640314, at *6
25 (W.D. Wash. July 8, 2016) (interpreting relevant portion of SSR
26 96-5p as requiring ALJ to recontact doctor to obtain treatment
27 records).

28 Because the ALJ provided specific and legitimate reasons for

1 rejecting Dr. Al-Wardi's October 13, 2011 note, remand is not
2 warranted on this ground.¹³

3 B. The ALJ Properly Assessed Plaintiff's Credibility

4 Plaintiff contends that the ALJ did not provide clear and
5 convincing reasons for discrediting her testimony. (J. Stip. at
6 16.) For the reasons discussed below, the ALJ did not err.

7 1. Applicable law

8 An ALJ's assessment of symptom severity and claimant
9 credibility is entitled to "great weight." See Weetman v.
10 Sullivan, 877 F.2d 20, 22 (9th Cir. 1989); Nyman v. Heckler, 779
11 F.2d 528, 531 (9th Cir. 1986). "[T]he ALJ is not required to
12 believe every allegation of disabling pain, or else disability
13 benefits would be available for the asking, a result plainly
14 contrary to" the law. Molina, 674 F.3d at 1112 (citing Fair v.
15 Bowen, 885 F.2d 597, 603 (9th Cir. 1989)).

16 In evaluating a claimant's subjective symptom testimony, the
17 ALJ engages in a two-step analysis. See Lingenfelter, 504 F.3d
18

19 ¹³ The ALJ also rejected Dr. Al-Wardi's statement because it
20 "appear[ed] to be tainted by [Plaintiff's] objective to obtain a
21 report that states that she is disabled in order to receive
22 disability benefits or other allowances" and because Dr. Al-Wardi
23 "appear[ed] to be actively assisting and advocating [Plaintiff's]
24 attempt to obtain benefits, rather than simply treating
25 [Plaintiff] or offering an objective opinion that [was]
26 corroborated by treatment records." (AR 43.) Because the ALJ
27 provided other legally sufficient reasons for rejecting Dr. Al-
28 Wardi's statement, the Court need not decide whether this was
error. See Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050,
1055 (9th Cir. 2006) (nonprejudicial or irrelevant mistakes
harmless); Donathan v. Astrue, 264 F. App'x 556, 559 (9th Cir.
2008) (when ALJ provided proper, independent reasons to reject
treating physician's opinions, any error ALJ may have made as to
other reasons was harmless and inconsequential).

1 at 1035-36. "First, the ALJ must determine whether the claimant
2 has presented objective medical evidence of an underlying
3 impairment [that] could reasonably be expected to produce the
4 pain or other symptoms alleged." Id. at 1036. If such objective
5 medical evidence exists, the ALJ may not reject a claimant's
6 testimony "simply because there is no showing that the impairment
7 can reasonably produce the degree of symptom alleged." Smolen,
8 80 F.3d at 1282 (emphasis in original).

9 If the claimant meets the first test, the ALJ may discredit
10 the claimant's subjective symptom testimony only if he makes
11 specific findings that support the conclusion. See Berry v.
12 Astrue, 622 F.3d 1228, 1234 (9th Cir. 2010). Absent a finding or
13 affirmative evidence of malingering, the ALJ must provide "clear
14 and convincing" reasons for rejecting the claimant's testimony.
15 Brown-Hunter v. Colvin, 806 F.3d 487, 493 (9th Cir. 2015) (as
16 amended); Treichler v. Comm'r of Soc. Sec. Admin., 775 F.3d 1090,
17 1102 (9th Cir. 2014). The ALJ may consider, among other factors,
18 (1) ordinary techniques of credibility evaluation, such as the
19 claimant's reputation for lying, prior inconsistent statements,
20 and other testimony by the claimant that appears less than
21 candid; (2) unexplained or inadequately explained failure to seek
22 treatment or to follow a prescribed course of treatment; (3) the
23 claimant's daily activities; (4) the claimant's work record; and
24 (5) testimony from physicians and third parties. Rounds v.
25 Comm'r Soc. Sec. Admin., 807 F.3d 996, 1006 (9th Cir. 2015) (as
26 amended); Thomas, 278 F.3d at 958-59. If the ALJ's credibility
27 finding is supported by substantial evidence in the record, the
28 reviewing court "may not engage in second-guessing." Thomas, 278

1 F.3d at 959.

2 2. Relevant background

3 In an undated disability report, Plaintiff stated that "it
4 ha[d] become such an ordeal just to take care of [her] home and
5 [her] own personal needs." (AR 152.) In a function report dated
6 January 8, 2012, she stated that she was "in constant and
7 continuous pain on [her] right thigh," which "limit[ed] [her]
8 mobility." (AR 162.) She could not sit for long, which made it
9 difficult for her to use a computer. (Id.) She had difficulty
10 providing for her personal care because of cramping in her
11 fingers and hands. (AR 163.) She noted that she had "become an
12 insomniac" and reiterated that she had problems in areas of
13 personal care. (Id.) She stated that she sometimes forgot to
14 take her medication in the morning. (AR 164.) Her mother
15 prepared all of her meals. (Id.) She was unable to do house or
16 yard work because of "excruciating pain" and "deep" depression.
17 (AR 165.) She went outside daily to water the lawn (if she was
18 not in excruciating pain or suffering deep depression) or when
19 she needed to attend doctor or therapy appointments. (Id.) She
20 noted that she was able to crochet but could no longer decorate
21 cakes, as "squeezing piping gels hurt [her] hands." (AR 166.)
22 She stated that she used a walker and that the pain in her right
23 thigh paralyzed her. (AR 167.) She ticked boxes to indicate
24 that her conditions affected her ability to lift, squat, bend,
25 stand, reach, walk, sit, kneel, climb stairs, see far, complete
26 tasks, and use her hands. (Id.)

27 In a disability report submitted on May 18, 2012, Plaintiff
28 stated that "[t]he constant excruciating chronic pain of

1 fibromyalgia [had] run its course" and that she suffered from
2 "insomnia due to the pain" and "severe depression." (AR 173,
3 183.)¹⁴ Her use of the walker had intensified, the cramping in
4 her fingers and hands prevented her from taking care of basic
5 hygiene and daily chores, and she had complete loss of bladder
6 control, severe anxiety, "massive" hair loss, and "stress
7 vomiting and nose bleeds." (AR 174.) She stated that she could
8 "no longer move on [her] own." (Id.) She wrote that she
9 suffered "from an apperent [sic] life-altering ghost illness" and
10 noted that there was "no blood test to prove [that her]
11 fibromyalgia exist[ed]." (AR 181.) She had been told by a
12 doctor that her issues were "all in [her] head" and that "labs
13 performed proved scientifically [she] was clear of any medical
14 condition"; on being told this, she was sent into "a frenzy of
15 outrage" and was committed to a psychiatric facility for
16 "speaking harsh words of suicidal tendencies." (AR 182.)

17 At the February 2013 hearing, Plaintiff testified that she
18 couldn't work because of "chronic pain that radiates, starting
19 from [her] legs and spread[ing] throughout [her] body." (AR 77.)
20 She found it "difficult to move" and became "stiff mainly because
21 of the pain." (Id.) She testified that her mood changes were
22 severe and that she suffered "uncontrollable pain, even with
23 medication." (Id.) The pain made her unable to fully
24 concentrate. (Id.) She had been told by her friends that she
25 had become forgetful (id.), and she testified that she had become

27 ¹⁴ The ALJ did not include fibromyalgia among Plaintiff's
28 impairments, a finding she has not challenged on appeal.

1 short tempered and anxious (AR 79). She used a walker (id.) and
2 had "difficulty in carrying a gallon of milk" (AR 80).¹⁵ She
3 "always [had] pain in [her] leg" (id.) and found it "difficult to
4 get into the shower" (AR 81). She was unable to keep up with her
5 personal hygiene. (AR 82.) Her hand cramped when she tried to
6 hold a toothbrush or hairbrush, it hurt to extend her arms, and
7 she had an incontinence problem. (Id.) She testified that she
8 did not do ordinary, routine household tasks but that she was
9 able to prepare her own meals, and she tried to follow her
10 prescribed diet. (AR 84.) She stated that she took her
11 medication in accordance with the prescribed frequency and
12 dosage, but that she didn't notice any changes when she did so.
13 (AR 85.) She testified that since March 2011, her pain had
14 increased, and it was now stronger in her left leg than her
15 right. (AR 85-86.)

16 3. Analysis

17 The ALJ credited some of Plaintiff's subjective complaints,
18 stating that he "afforded her the benefit of the doubt" and
19 therefore restricted her to no more than light work. (AR 44.)
20 But he discredited her complaints to the extent they were
21 inconsistent with her RFC, finding that although her "medically
22 determinable impairments could reasonably be expected to cause
23 the alleged symptoms[,]. . . [her] statements concerning the
24 intensity, persistence and limiting effects of these symptoms
25 [were] not entirely credible." (AR 41.) As discussed below, to

26
27 ¹⁵ A gallon of milk weighs approximately eight pounds.
28 Hernandez v. Colvin, No. 1:12-CV-00330-SMS, 2013 WL 4041862, at
*9 n.4 (E.D. Cal. Aug. 8, 2013).

1 the extent the ALJ rejected Plaintiff's subjective complaints, he
2 provided clear and convincing reasons for doing so.

3 First, the ALJ found that Plaintiff's subjective complaints
4 were not supported by the objective medical evidence. (AR 41-
5 42.) The ALJ was entitled to consider the lack of objective
6 medical evidence as one factor in assessing her subjective
7 complaints and credibility. See Burch v. Barnhart, 400 F.3d 676,
8 681 (9th Cir. 2005) ("Although lack of medical evidence cannot
9 form the sole basis for discounting pain testimony, it is a
10 factor that the ALJ can consider in his credibility analysis.");
11 Carmickle, 533 F.3d at 1161 ("Contradiction with the medical
12 record is a sufficient basis for rejecting the claimant's
13 subjective testimony.").

14 Plaintiff claimed that she suffered from a variety of
15 completely debilitating illnesses, but she admitted that
16 "scientifically [she] was clear of any medical condition." (AR
17 182.) She alleged that she could not walk without a walker and
18 that her pain made it nearly impossible to take care of daily
19 tasks and personal hygiene, yet Dr. Sargeant was unable to find
20 any evidence to confirm that a walker was necessary or that she
21 had any limitations in using her hands for fine or gross
22 manipulation. (AR 523.) In fact, Dr. Sargeant found that
23 Plaintiff's "gait and balance" appeared "strong and stable" and
24 that "[m]uch of the weight during ambulation appeared to be on
25 her feet rather [than] on the walker itself." (Id.) One of the
26 most recent doctor's visits in the record resulted in a finding
27 that no "organic cause for her weakness" existed. (AR 645.)
28 Drs. Sargeant, Rathana-Nakintara, Metcalf, and Yousuf all found

1 that she had no significant workplace limitations and that she
2 could perform at least a full range of light work. And as the
3 ALJ noted, her alleged conversion disorder was not "established
4 by repeated diagnoses by acceptable medical sources over time,"
5 and "neither the consultative physician, to whom [Plaintiff]
6 reportedly mentioned the condition, nor the consultative
7 psychiatrist, who is a specialist in mental disorders, included
8 it among their diagnostic impressions." (AR 38 (citations
9 omitted).) Plaintiff has not challenged that finding on appeal.

10 Second, the ALJ properly cited an absence of commensurate
11 treatment (AR 43) and Plaintiff's refusal to follow testing and
12 treatment plans (AR 37) as reasons for discrediting her
13 testimony. Indeed, Dr. Sargeant noted that Plaintiff "refuse[d]
14 to demonstrate any ambulation without the walker." (AR 523.)
15 Plaintiff originally complained of right-side pain (see AR 75,
16 140) but later stated that the pain was stronger on her left (AR
17 85-86); nonetheless, there is no evidence she ever sought
18 treatment for her left-side pain. Further, there are no – or
19 sparse – records of treatment for her alleged aneurysm, heart
20 problems, sporadic paralysis, and lumps in her breast. The ALJ
21 also observed that Plaintiff had "been noted to not be taking
22 medications as instructed." (AR 44; see, e.g., AR 164 (Plaintiff
23 stating that she sometimes forgot to take medication in morning),
24 530 (doctor noting that Plaintiff had "not been taking Cymbalta
25 for the last two weeks"), 632 (nurse practitioner noting that
26 Plaintiff reported not being able to take insulin for three days
27 because of "inability to move"), 722 (Plaintiff reporting at
28 health-center visit that she "was not taking any insulin for 2-3

1 months" and "not checking [her] sugars daily").) Thus,
2 sufficient evidence in the medical record supported the ALJ's
3 finding that Plaintiff was not complying with testing and
4 treatment plans. See Tommasetti v. Astrue, 533 F.3d 1035, 1039
5 (9th Cir. 2008) (ALJ may discount claimant's testimony in light
6 of "unexplained or inadequately explained failure to seek
7 treatment or to follow a prescribed course of treatment"); SSR
8 96-7p, 1996 WL 374186, at *7 (July 2, 1996) (claimant's
9 statements "may be less credible if the level or frequency of
10 treatment is inconsistent with the level of complaints").

11 Third, the ALJ permissibly discounted Plaintiff's subjective
12 complaints because they were inconsistent with her reported daily
13 activities. (AR 45.) Indeed, she was able to walk four to five
14 blocks to her physical-therapy appointments in November 2011 (AR
15 476), Dr. Sargeant reported in February 2012 that she was able to
16 walk up to 10 blocks with a walker (AR 521), and she testified
17 that she was able to use public transportation to get to her
18 doctors' appointments (AR 79). Her friend Barajas noted that
19 Plaintiff was able to perform three to four hours of chores at a
20 time (see AR 155; infra p. 30-31), although Plaintiff herself
21 said she needed to take rest breaks during those three or four
22 hours (AR 164). These reported activities are at odds with her
23 May 18, 2012 statements that she could "no longer move on [her]
24 own" (AR 174) and was "no longer self-efficient" (AR 182) and
25 with her February 27, 2013 testimony that she was in
26 "uncontrollable pain" (AR 77) and that she did not do "ordinary
27 routine household tasks such as mopping, dusting, sweeping,
28 vacuuming" (AR 84). Also, she testified at the hearing that she

1 prepared her own meals (AR 84), something she claimed in a
2 function report she did not do (AR 164). As such, the ALJ
3 properly discounted Plaintiff's credibility because her alleged
4 daily activities were inconsistent with statements she had made
5 about her allegedly completely debilitating symptoms. See
6 Molina, 674 F.3d at 1112 (ALJ may discredit claimant's testimony
7 when "claimant engages in daily activities inconsistent with the
8 alleged symptoms" (citing Lingenfelter, 504 F.3d at 1040));
9 Verduzco v. Apfel, 188 F.3d 1087, 1090 (9th Cir. 1999) (in
10 assessing credibility, ALJ can consider whether plaintiff's
11 statements were inconsistent with other statements and evidence).

12 Plaintiff contends that the ALJ "did not provide which of
13 [her] specific statements he accepted or rejected." (J. Stip. at
14 17.) An ALJ is required to "specifically identify the testimony
15 [from a claimant] she or he finds not to be credible and . . .
16 explain what evidence undermines the testimony." Treichler, 775
17 F.3d at 1102 (alterations in original); see also Brown-Hunter,
18 806 F.3d at 493; SSR 96-7p, 1996 WL 374186, at *4 (July 2, 1996)
19 (decision "must be sufficiently specific to make clear to the
20 individual and to any subsequent reviewers the weight the
21 adjudicator gave to the individual's statements and the reasons
22 for that weight"). Here, however, the ALJ did so. He summarized
23 the testimony about her "additional issues," specifically
24 including her claimed aneurysm and breast lumps (AR 37), and then
25 explained why they were not supported by the medical evidence: it
26 was "notable for the number of diagnostic imaging scans, medical
27 tests, and other clinical studies that have yielded repeatedly
28 unremarkable findings." (Id.) He engaged in the same analysis

1 with respect to Plaintiff's "claimed" "neuropsychiatric issues."
2 (AR 37-38.) Finally, he pointed to specific statements Plaintiff
3 made that he found not credible and explained why, including that
4 she was unable to sit, stand, or walk for very long and that she
5 had difficulty lifting a gallon of milk. (AR 41-42.) The ALJ
6 therefore did not err. See Treichler, 775 F.3d at 1103 (ALJ's
7 analysis "need not be extensive" as long as he "provide[s] some
8 reasoning in order for [the court] to meaningfully determine
9 whether the ALJ's conclusions were supported by substantial
10 evidence").

11 In sum, the ALJ provided clear and convincing reasons for
12 finding Plaintiff only partially credible. Because those
13 findings were supported by substantial evidence, this Court may
14 not engage in second-guessing. See Thomas, 278 F.3d at 959.
15 Plaintiff is not entitled to remand on this ground.

16 C. The ALJ Properly Assessed the Credibility of the Lay
17 Witness

18 Plaintiff contends that the ALJ did not provide germane
19 reasons for discrediting the testimony of her friend Barajas.
20 (J. Stip. at 22.) For the reasons discussed below, remand is not
21 warranted on this basis.

22 1. Applicable law

23 "In determining whether a claimant is disabled, an ALJ must
24 consider lay witness testimony concerning a claimant's ability to
25 work." Bruce v. Astrue, 557 F.3d 1113, 1115 (9th Cir. 2009)
26 (citing Stout v. Comm'r, Soc. Sec. Admin., 454 F.3d 1050, 1053
27 (9th Cir. 2006)); see also § 404.1513(d) (statements from
28 spouses, parents, other relatives, and friends can be used to

1 show severity of impairments and effect on ability to work).
2 Such testimony is competent evidence and "cannot be disregarded
3 without comment." Bruce, 557 F.3d at 1115 (emphasis in original)
4 (citing Nguyen v. Chater, 100 F.3d 1462, 1467 (9th Cir. 1996));
5 Robbins, 466 F.3d at 885 ("[T]he ALJ is required to account for
6 all lay witness testimony in the discussion of his or her
7 findings."). When rejecting the testimony of a lay witness, an
8 ALJ must give specific reasons germane to that witness. Bruce,
9 557 F.3d at 1115; see also Stout, 454 F.3d at 1053.

10 An ALJ's failure to address a lay witness's testimony is
11 harmless if it is "'inconsequential to the ultimate nondisability
12 determination' in the context of the record as a whole." Molina,
13 674 F.3d at 1122 (citations omitted); see also Tommasetti, 533
14 F.3d at 1038. That happens when "the same evidence that the ALJ
15 referred to in discrediting [the claimant's] claims also
16 discredits [the lay witness's] claims." Molina, 674 F.3d at 1122
17 (alterations in original) (citing Buckner v. Astrue, 646 F.3d
18 549, 560 (8th Cir. 2011)).

19 2. Relevant background

20 Barajas submitted a third-party function report dated
21 January 6, 2012. (AR 153-60.) She stated that she spent three
22 to five hours a day with Plaintiff and assisted her with her
23 shopping needs. (AR 153.) Barajas noted that Plaintiff was
24 unable to sit for long periods of time, cramping in her hands
25 caused her to drop things, and she needed assistance in many
26 areas of personal care. (AR 153-54.) Barajas cited Plaintiff's
27 depression as a reason she could not complete many activities.
28 (AR 155.) She also noted that Plaintiff was "able to do most

1 household chores but at a slow pace." (Id.) These chores,
2 according to Barajas, took three to four hours to complete.
3 (Id.) Plaintiff was able to leave the house for doctor's
4 appointments and shopping. (AR 156.) Barajas ticked boxes
5 indicating that Plaintiff had trouble lifting, squatting,
6 bending, standing, reaching, walking, sitting, kneeling, stair
7 climbing, completing tasks, concentrating, and using her hands.
8 (AR 158.) Barajas noted that Plaintiff was unable to walk more
9 than 50 yards without taking a 10-minute rest. (Id.) She stated
10 that Plaintiff used a walker and glasses "all the time" (AR 159)
11 and was "confine[d] to a walker and her memories" (AR 160).

12 3. Analysis

13 The ALJ noted that he was required to consider witness
14 declarations, such as that provided by Barajas. (AR 45.)
15 However, he accorded "limited weight" to Barajas's statements
16 because they were "not fully consistent with the overall
17 evidence" in the record. (AR 46.) He noted that Barajas
18 "echoed" many of Plaintiff's allegations. (AR 41.) He also
19 noted that she "[did] not appear to be specially trained to make
20 exacting observations as to medical signs and symptoms" and that
21 she could not be considered unbiased "because of her friendship
22 with [Plaintiff]." (AR 46.)

23 Plaintiff argues that the ALJ "failed to give germane
24 reasons for rejecting this extremely relevant testimony" and "did
25 not specifically indicate what he accepted or rejected" of
26 Barajas's report. (J. Stip. at 22.) But as discussed above, the
27 ALJ fully summarized the medical evidence and discussed why it
28 was inconsistent with Plaintiff's account of her symptoms, an

1 account that was "echoed" by Barajas. (Compare, e.g., AR 155
2 (Barajas noting that it takes three to four hours for Plaintiff
3 to complete chores) with 164 (Plaintiff noting same) and AR 158
4 (Barajas ticking boxes for lifting, squatting, bending, standing,
5 reaching, walking, sitting, kneeling, stair climbing, completing
6 tasks, concentration, and using hands as activities affected by
7 Plaintiff's condition) with 167 (Plaintiff ticking same boxes,
8 except adding "seeing" and leaving out "concentration") and AR
9 159 (Barajas noting that Plaintiff does not handle personal
10 stress well and that she uses walker and glasses "all the time")
11 with 168 (Plaintiff noting same) and AR 160 (Barajas noting that
12 methadone makes Plaintiff lethargic) with 169 (Plaintiff noting
13 same).)

14 Because the ALJ properly discredited Plaintiff's subjective
15 complaints and because Barajas's function report echoed those
16 complaints, the ALJ necessarily gave germane reasons for
17 assigning limited weight to Barajas's statements. See Valentine
18 v. Comm'r of Soc. Sec., 574 F.3d 685, 694 (9th Cir. 2009)
19 (holding that because "the ALJ provided clear and convincing
20 reasons for rejecting [claimant's] own subjective complaints, and
21 because [the lay witness's] testimony was similar to such
22 complaints, it follows that the ALJ also gave germane reasons for
23 rejecting [the lay witness's] testimony"); cf. Molina, 674 F.3d
24 at 1117 ("Where lay witness testimony does not describe any
25 limitations not already described by the claimant, and the ALJ's
26 well-supported reasons for rejecting the claimant's testimony
27 apply equally well to the lay witness testimony, it would be
28 inconsistent with our prior harmless error precedent to deem the

1 ALJ's failure to discuss the lay witness testimony to be
2 prejudicial per se."). The ALJ also noted that Barajas's report
3 was inconsistent with the overall evidence. (AR 46.) That was
4 also a germane reason for discounting it. See Bayliss v.
5 Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005) ("[i]nconsistency
6 with medical evidence" is germane reason for discounting lay
7 opinion).

8 That Barajas was not "specially trained" and that her
9 allegations might have been biased because of her friendship with
10 Plaintiff might not have been appropriate, germane reasons for
11 the ALJ to discount her statements. See § 404.1513(d)(4) (ALJ
12 may use statements from nonmedical sources to show severity of
13 impairments and how they affect claimant's ability to work); cf.
14 Smolen, 80 F.3d at 1289 ("The fact that a lay witness is a family
15 member cannot be a ground for rejecting his or her testimony.").
16 But see Greger v. Barnhart, 464 F.3d 968, 972 (9th Cir. 2006)
17 (finding that claimant's former girlfriend's "close relationship"
18 with claimant such that she was "possibly 'influenced by her
19 desire to help him'" was germane reason to discount her lay-
20 witness testimony (alteration omitted)). But any potential error
21 was harmless because the ALJ provided two sufficient and germane
22 reasons for discounting Barajas's statement: her report echoed
23 Plaintiff's subjective symptom allegations, which he had already
24 discredited, and it was inconsistent with the medical record.
25 Cf. Carmickle, 533 F.3d at 1162-63 (upholding credibility
26 determination despite errors when remaining reasons supporting it
27 were valid). Reversal therefore is not warranted on this ground.

1 **VI. CONCLUSION**

2 Consistent with the foregoing and under sentence four of 42
3 U.S.C. § 405(g),¹⁶ IT IS ORDERED that judgment be entered
4 AFFIRMING the decision of the Commissioner, DENYING Plaintiff's
5 request for remand, and DISMISSING this action with prejudice.

6
7 DATED: September 26, 2016


8 JEAN ROSENBLUTH
9 U.S. Magistrate Judge
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26 ¹⁶ That sentence provides: "The [district] court shall have
27 power to enter, upon the pleadings and transcript of the record,
28 a judgment affirming, modifying, or reversing the decision of the
Commissioner of Social Security, with or without remanding the
cause for a rehearing."